

MUNICIPAL ANIMAL IMPOUND AGREEMENT

AGREEMENT, dated as of January 1, 2020 by and between the City of West St. Paul, a Minnesota municipal corporation, and Dr. David Abramowicz (each being sometimes referred to as Party", or collectively as "Parties").

WHEREAS, Dr. David Abramowicz, a licensed veterinarian, owns and operates an animal hospital and a kennel known as South St. Paul Animal Hospital PA at 501 North Concord Street, South St. Paul, Minnesota; and

WHEREAS, the Parties desire to operate the Municipal Animal Pound upon the terms, conditions and provisions of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, the Parties agree as follows:

ARTICLE ONE

Definitions

Section 1.01. Definitions: When used in this is Agreement, the following words or phrases have the following meanings and the following definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined:

"Agreement" means this Agreement, as it may be amended, supplemented or restated from time to time,

"Animal" means a dog or cat.

"City" means the City of West St. Paul.

"Municipal Animal Pound" or "Pound" means the South St. Paul Animal Hospital PA, 501 North Concord Street, South St. Paul, Minnesota.

"Code" means the West St. Paul City Code. "Abramowicz"

means Dr. David Abramowicz.

Certain other terms capitalized but not defined herein shall have the meaning assigned to such terms in Section 90 of the Code.

ARTICLE TWO

The Agreement

Section 2.01. Purpose: The purpose of this Agreement is to define the rights and obligations of the City and Abramowicz with respect to the operation of the Pound throughout the term of this Agreement.

Section 2.02. Cooperation: The City and Abramowicz will cooperate and use their best efforts to ensure the most expeditious implementation of the various provisions of this Agreement. The Parties agree in good faith to undertake resolution of disputes, if any, in an equitable and timely manner and in accordance with the provisions of this Agreement. Unforeseen problems and situations involving the Agreement on any additional concerns not covered in the contract, can be resolved by having an open discussion with Dr. Abramowicz and a representative of the City.

Section 2.03. Term: This Agreement shall remain in effect for three (3) years commencing upon signatures of all parties unless either party gives written notice for termination as articulated in Section 6.05 of this agreement.

Section 2.04. Recitals: The above recitals are true and correct as of the date of this Agreement and constitute a part of this Agreement.

ARTICLE THREE

Designation of Pound

Section 3.01. Pound Designation: The City hereby designates the South St. Paul Animal Hospital as the Municipal Animal Pound and Pound Keeper.

ARTICLE FOUR

Abramowicz's Obligations

Section 4.01. Impoundment: Abramowicz shall confine Animals in the Pound delivered there by police officers, reserve officers, or the community service officers of the City, for the time periods required by this Agreement, and dispose of unclaimed Animals as provided herein, and with the understanding that not more than eight (8) Animals may be confined at any time. If Animals are delivered to the Pound that will result in the maximum number being exceeded, Dr. Abramowicz will use his best efforts to find appropriate boarding facilities for them.

Section 4.02. Pound Condition: The Pound shall be maintained in a clean and sanitary condition at all times.

Section 4.03. Animal Care: Animals impounded in the Pound shall receive kind treatment, sufficient food and water for the Animal's comfort, and proper care and shelter.

Section 4.04. Pound Hours:

- a) The Pound shall be open to the public from 8:00 a.m. to 6:00 p.m., Monday through Friday and from 8:00 a.m. to noon on Saturday. The Pound will not be open to the public on Sunday or on legal holidays.
- b) Police officers, reserve officers, and the community service officer of the City shall have access to the Pound 24 hours per day, 7 days a week.

Section 4.05. Holding Periods:

- a) Except as otherwise provided in this section, impounded Animals shall be confined for six (6) calendar days, unless sooner claimed by the owner.
- b) If an Animal is known to be or suspected of being rabid and has, or has not, bitten a person, it must be confined in the Pound for not less than ten (10) days.

Section 4.06. Kennel License: At all times during the term of this Agreement, Abramowicz shall maintain a kennel license issued by the State of Minnesota for the Pound.

Section 4.07. Claimed Animals; Fees: Prior to the release of a claimed Animal to its owner, Abramowicz shall collect in cash, or immediately available funds, the impound fee, boarding fee, and medical fee, if any. A dog shall not be released unless it has a valid license issued by the City, or the municipality in which the Owner lives, as the case may be.

Section 4.08. Unclaimed Animals: Unclaimed Animals are to be disposed of after the six (6) day period. This document defines a term in the contract between South St. Paul Animal Hospital PA and the City of West St. Paul in regards to the contract for impounding services. The purpose of the definition is to prevent a misunderstanding in regards to the term, and thereby avoid any unforeseen legal entanglement as a result of action taken by South St. Paul Animal Hospital PA.

The term to be defined as "Disposal;" It is agreed that when an impounded animal comes to the end of its six (6) days stay, it is to be disposed of. Typically, this is meant to mean euthanasia. However, it is understood that in the humanitarian interest to the citizens of the City of West St. Paul, animals may be disposed of in other ways that South St. Paul Animal Hospital PA sees fit. This can include, but not limited to, keeping the animal longer than the six (6) day period in order that the animal may be spared and placed in a home or shelter. No additional charges will be made to the City of West St. Paul beyond the disposal fee. All additional costs beyond the six (6) days shall be the responsibility of South St. Paul Animal Hospital PA.

The animals are not to be sold for research or any other purpose that the Minnesota Board of Animal Health would consider unethical.

Section 4.09. Insurance: Abramowicz, at his cost, shall at all times during the term of this Agreement, have and keep in force insurance in an amount not less than \$10,000 for property damage arising from one occurrence, \$200,000 for personal injuries or death, and \$600,000 for personal injuries or death arising out of a single occurrence. The City shall be named as an additional insured under the policy. Any policy maintained under this section shall provide that it shall not be canceled, materially changed, or not renewed without sixty (60) days prior written notice by the insurer to the City. Abramowicz shall furnish a certificate or certificates showing such insurance in effect.

ARTICLE FIVE

Fees; Payment

Section 5.01. Fees. The following fees shall be charged:

A. Impound fee \$25.00;

8. Boarding Fee:

1. \$30.00 per day or fraction thereof for a dog,
2. \$25.00 per day or fraction thereof for a cat.
3. \$25.00 per day or fraction thereof for an exotic animal

C. Disposal Fee:

1. \$70.00 for an Animal under 50 pounds,
2. \$90.00 for an Animal 50 pounds or more.

D. Medical fee to stabilize Animal for the confinement period, \$50.00 maximum.

E. After the first year of this contract and each year thereafter until the contract becomes void, Dr. Abramowicz may increase the disposal fees articulated in item "c" above once per year and by no more than 10% of the current disposal fee rate. Notification of an increase in disposal fees shall be done to the police chief in writing and at least 90 days before such an increase will take effect.

Section 5.02. Fees Payment: The City shall pay the boarding fee, euthanasia fee or medical fee with regard to each unclaimed Animal. Uncontested fees shall be paid within 30 days following receipt by the City of the statement.

Section 5.03. Monthly Statement; Activity Report: Abramowicz shall monthly submit a written statement to the City of all fees earned in the preceding month. At the same time, Abramowicz shall remit to the City all fees collected in the preceding month. The monthly statement shall show for each type of Animal in the preceding month (a) the number impounded, (b) the number of days each Animal was confined, (c) the disposal costs, (d) medical costs, and (e) the number

placed for adoption. The City shall make payment to Abramowicz for services including boarding, disposal, and medical treatment of animals where an owner cannot be found.

ARTICLE SIX

Default: Termination

Section 6.01. Events of Default: The persistent or repeated failure or refusal by a Party to fulfill substantially any of its material obligations under this Agreement shall constitute an Event of Default on the part of the defaulting Party.

Section 6.02. Opportunity to Cure: No event set forth in this Section 6.01 shall constitute an event of Default giving rise to the right to terminate unless and until (a) written notice is given to the defaulting Party, specifying that a particular Event(s) of Default exists which will, unless corrected within a reasonable period of time which shall be not less than five (5) days, constitute a material breach of this Agreement on the part of the defaulting Party, and (b) the defaulting Party has not corrected such default within such reasonable period of time.

Section 6.03. Unavoidable Delay: Unavoidable Delay means a delay resulting from a cause over which the Party required to make performance does not have control and which cannot or could not have been avoided by the exercise of reasonable care, including but not limited to acts of God, accidents, war, civil unrest, embargoes, strikes, litigation, and delays of the other Party or its contractors, employees, or agents in the performance of their duties under this Agreement.

Section 6.04. Performance Excused: In the event of an Unavoidable Delay, the inability or delay in the performance of any of the terms and provisions of this Agreement shall be excused and shall not constitute an Event of Default.

Section 6.05. Termination: Either Party shall have the right to terminate this Agreement if an event of Default as defined in Section 6.1 on the part of the other Party has occurred. A Party shall give ninety (90) days written notice of termination to the other Party. No termination shall limit or otherwise affect the respective rights and obligations of either party accrued prior to the date of such termination.

ARTICLE SEVEN

General Provisions

Section 7.01. Notices: All notices, requests, or other communications required or permitted to be given or made under this Agreement by either Party hereto shall be in writing and shall be deemed to have been duly given or served if delivered personally to or sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the party intended to receive such notice, at the addresses set forth below, or at such other addresses as the Parties may designate from time to time by notice given to the other party in the manner hereinbefore set forth:

If to the City: City of West St. Paul
Attn: Chief of Police
1616 Humboldt Avenue
West St. Paul, MN 55118

If to Abramowicz: Dr. David Abramowicz
501 North Concord Street
South St. Paul, MN 55075

In the case of a mailed notice, the registration or certification slip, and not the return slip, shall be conclusive as evidence of the mailing date of any such notice. All mailed notices are deemed delivered 72 hours after deposit in a regularly maintained United States Post Office *mail* box in Minnesota, or upon personal delivery.

Section 7 .02. Further Action: The Parties agree to execute such further documents, and take such further actions, as may be reasonably required or expedient to carry out the provisions and intentions of this Agreement, or any agreement or document relating hereto or entered into in connection herewith.

Section 7 .03. Assignment: Neither Party's rights and obligations hereunder shall be assignable without the prior written consent of the other Party.

Section 7.04. Choice of Law: This Agreement shall be governed and construed and enforced in accordance with the laws of the State of Minnesota.

Section 7. 05. Entire Agreement: This Agreement supersedes any prior agreements and contains the entire agreement of the Parties and all representations with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement.

Section 7.06. Amendments: Any amendments to this Agreement shall be in writing and signed by all Parties.

Section 7.07. Counterparts: This Agreement may be executed in counterparts, any one of which shall be deemed to be an original, but such counterparts when taken together shall constitute but one agreement.

Section 7.08. Captions: Captions are for convenience only and shall not be deemed part of the contents of this Agreement.

Section 7.09. Parties in Interest: This Agreement shall be binding upon and inure solely to the benefit of the Parties hereto and their permitted assigns, and nothing in this Agreement,

expressed or implied, is intended to confer upon any other person any rights or remedies of any nature under or by reason of this Agreement.

Section 7 .10. Waiver: The waiver of any of the rights or remedies arising pursuant to this Agreement on any one occasion by any Party shall not constitute a waiver of any rights or remedies in respect to any subsequent breach or default of the terms of this Agreement.

Section 7 .11. Conflict of Interest: Abramowicz represents and warrants that no member, official, officer, or employee of the City has or shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 7 .12. Minnesota Government Data Practices Act: Information supplied by Abramowicz to the City is subject to the Minnesota Government Data Practices Act (the "Act"), Minnesota Statutes, Chapter 13. Such information shall become public data unless it falls into one of the exceptions in the Act. Abramowicz shall notify the City of any data that Abramowicz believes is classified as non-public data.

Section 7 .13. Examination of Records: Pursuant to Minnesota Statutes, Section 168.06, subd. 4, the books, records, documents, and accounting procedures and practices of Abramowicz relative to this Agreement are subject to examination by the City, or its authorized representative, and either the legislative auditor or the state auditor, as appropriate .

Abramowicz shall maintain the records for a period of not less than three (3) years from the date of the termination of this Agreement.

CITY OF WEST ST. PAUL

By: _____
David J. Napier, Mayor

By: _____
Ryan Schroeder, City Manager

By: _____
Dr. David Abramowicz